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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,301	05/08/2001	Robert W. Killick	038441/0104	2790
22428	7590	06/28/2006	EXAMINER	
FOLEY AND LARDNER LLP			PRYOR, ALTON NATHANIEL	
SUITE 500			ART UNIT	
3000 K STREET NW			PAPER NUMBER	
WASHINGTON, DC 20007			1616	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,301

Applicant(s)

KILLICK ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 35-38 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 42-45 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 35-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Fatty quaternary ammonium chloride (alkyltrimethylammonium chloride), fatty amine oxide (dimethylaurylamine oxide) and fatty alkyldimethylamine salts of simple organic acids in claims 35-38. Note that there exist no examples of fatty dimethylamine salts of simple organic salts in the claims. Therefore, a new search is required for claims 35-38. Applicant recites that claims 35-38 are amended to harmonize the scope of claimed cationic emulsifiers with those of claims 42-45. Claims 35-38 recite "mineral oil" ,whereas claims 42-45 recite "alkyl esters of fatty acids" which require different searches. Since a different type of emulsifier (fatty alkyldimethylamine salts of simple organic acids) which requires a new search is added to claims 35-38, an election requirement is being made.

Applicant is required, in reply to this action, to elect a single species (elect a specifically named or completely defined compound from fatty amine oxide or fatty amine oxide or fatty alkyldimethylamine salts of simple organic acids) to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Addressing the issues

- I. Claims 34 and 41 have been cancelled in amendment filed 4/11/06; however, Applicant makes arguments as to why claims 34 and 41 are patentable over Hayashi and Hirabayashi or Hirabayashi and Manabe.**

A. Applicant argues:

- 1) There is no question that neither combination of references teaches or suggests the ingredients in specific claimed amounts.
- 2) In view of Examiner interview summary dated 9/26/05, Applicant provided unexpected results to traverse rejections on record. In Declaration is provided unexpectedly stable homogeneous compositions comprising instant amounts of each claimed ingredient. The stable compositions disclosed in the Declaration are as follows:
 - a) 20% mineral oil, 15% ammonium sulfate, and 5% dimethyllaurylamine oxide.
 - b) 20% ethyl oleate, 15% ammonium sulfate, and 5% dimethyllaurylamine oxide.

and

- c) 15% mineral oil, 5% ammonium sulfate, and 1.5% dimethylaurylamine oxide.

Applicant also provides data in the Declaration showing the instability of compositions having concentrations of claimed ingredients falling outside of the claimed ranges. Applicant also explains that instant homogeneous composition is advantageous to farmers since no preparation before application is required.

B. Examiner argues:

- 1) The combination of references may not anticipate the instant combination of ingredients in the instant amounts. However, the combination of references suggests the instant homogeneous compositions. Note that in I above, the amount of ethoxylated fatty amine, mineral oil and ammonium chloride fall within the claimed ranges for the instant compositions. See office action dated 6/16/05. Also note that Hayashi also teaches that 1-95% vegetable oils such as fatty acid esters can be used in his composition. See Hayashi page 3 line 58 – page 4 line 6, page 6 lines 25-33. Note that in II above, the combination of ingredients including ammonium chloride, mineral oil, and alkyltrimethylammonium chloride is suggested. The amount of each ingredient to include in the combination is determined through routine experimentation. In the

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absence of unexpected results, II makes the instant invention obvious. See office action dated 6/16/05.

2. The results submitted by the Applicant in the Declaration are unexpected and makes certain aspects of the invention non-obvious. However, the claims are not commensurate in scope with the unexpected results provided in the Declaration. Examiner agrees that compositions comprising a) mineral oil or ethyl oleate plus ammonium sulfate plus fatty amine oxides and b) mineral oil or ethyl oleate plus ammonium sulfate plus alkyltrimethyl ammonium chloride are allowable. In addition, Examiner understands how homogeneous compositions ready to use would circumvent mixing problems that could occur if farmers had to mix components before use.

II. Rejection of claim 46 under 35 USC 103 as being obvious over Mueninghoff in view of Oshio will not be maintained. Claim 46 is cancelled.

III. Allowable Subject Matter

The prior art does not teach or suggest an invention comprising the instant amounts of named ammonium salts and cationic emulsifiers as specified in claim 42; and the instant amounts of named ammonium salts, cationic emulsifiers, and other components as specified in claims 43-45.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor
Primary Examiner
AU 1616